

SERVICE DATE – JUNE 7, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1107X

WEST MICHIGAN RAILROAD CO.—ABANDONMENT
EXEMPTION—IN VAN BUREN COUNTY, MICH.

Decided: June 6, 2013

In this decision, the Board is reopening the proceeding to terminate the Offer of Financial Assistance (OFA) process, issue a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, and impose a public use condition under 49 U.S.C. § 10905.

West Michigan Railroad Co. (WMI) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 10.67 miles of rail line between milepost 19.88 (west of the line's crossing of 56th Street near Lawrence, Mich.) and milepost 30.55 (east of Kalamazoo Street in Paw Paw, Mich.), in Van Buren County, Mich. Notice of the exemption was served and published in the Federal Register on January 28, 2013 (78 Fed. Reg. 5,867). The exemption was scheduled to become effective on February 27, 2013, unless it was stayed by the Board or a formal expression of intent to file an OFA under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed.

On February 6, 2013, Great Lakes Locomotive, LLC (Great Lakes) timely filed a formal expression of intent to file an OFA to purchase the entire line, which had the effect of automatically staying the effective date of the exemption until March 9, 2013.¹ In its filing, Great Lakes requested that WMI provide certain information and documentation as set forth in 49 C.F.R. § 1152.27(a). Great Lakes also requested that the 30-day time period for filing its OFA be tolled for an additional 30 days to allow Great Lakes an adequate opportunity to review and analyze WMI's information and submit its OFA.

By decision served March 8, 2013, Great Lakes' extension request was granted, the deadline for Great Lakes to file its OFA was extended to March 29, 2013, and the effective date of the exemption was postponed to April 8, 2013. That decision also imposed an historic

¹ See 49 C.F.R. § 1152.27(c)(2)(i).

preservation condition and two consultation conditions recommended by the Board's Office of Environmental Analysis (OEA).²

Additionally, the March 8 decision addressed a joint request by Friends of the Kal-Haven Trail and Van Buren County Board of Park Trustees (proponent) for the issuance of a NITU and for a public use condition to permit proponent to negotiate with WMI for acquisition of the right-of-way for use as a trail. The Board found that proponent had satisfied the requirements for issuance of a NITU and the imposition of a public use condition, but stated that the issuance and effectiveness of the NITU and public use condition would be held in abeyance until completion of the OFA process, which took precedence.

On March 28, 2013, Great Lakes requested an additional 30 days to allow the parties to complete a purchase of the line. By decision served March 29, 2013, the extension request was granted, the time period for Great Lakes to submit an OFA was extended to April 29, 2013, and the effective date of the exemption was further postponed to May 9, 2013.

On April 26, 2013, Great Lakes requested another 30-day extension to allow the parties to complete their negotiations. By decision served April 30, 2013, the extension request was granted, the time period for Great Lakes to submit an OFA was extended to May 29, 2013, and the effective date of the exemption was further postponed to June 8, 2013.

No OFA was filed by the May 29, 2013 deadline. Therefore, the OFA process has now terminated and the abandonment exemption will become effective as scheduled on June 8, 2013.

Because this decision terminates the OFA process and the Board has already determined that proponent has satisfied the requirements for a NITU and for public use, a NITU will now be issued and a public use condition will be imposed, and both will commence on the June 8, 2013 effective date of the exemption.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The OFA process is terminated.

² Upon recommendation from OEA, the Section 106 condition was removed by decision served March 27, 2013. The consultation conditions remain in effect.

3. The abandonment exemption will become effective on June 8, 2013, subject to the two consultation conditions previously imposed in this proceeding, and further subject to the conditions that: (1) WMI is prohibited from disposing of the corridor, including the removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels, for a 180-day period from June 8, 2013, to December 5, 2013, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use; and (2) WMI must comply with the interim trail use/rail banking procedures set forth below.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by December 5, 2013, interim trail use may be implemented. If no agreement is reached, WMI may fully abandon the line, subject to the conditions imposed in this proceeding. If an interim trail use/rail banking agreement is executed before December 5, 2013, the public use condition will expire to the extent the interim trail use/rail banking agreement covers the same line.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.